

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARCUS BRENT FIELDS,

Plaintiff,

-against-

PFIZER, et al.,

Defendants.

24-CV-6653 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently incarcerated in the Kern Valley State Prison in Delano, California, filed this *pro se* complaint alleging that in 2021, he was given a “harmful Pfizer Covid 19 vaccine shot.” (ECF 1 ¶ V.) He did not pay the filing fees or submit the documents necessary to seek leave to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”).

By order dated September 11, 2024, the Court: (1) construed the filing as seeking leave to proceed IFP; and (2) denied that application, because: (a) Plaintiff is barred, under 28 U.S.C. § 1915(g), from filing any new action IFP while he is a prisoner, and (b) his allegations did not suggest that he was in imminent danger of serious physical injury. (ECF 3.)¹ The civil judgment was dated and entered on September 16, 2024. (ECF 4.) On September 27, 2024,² Plaintiff filed a notice of appeal and a motion for an extension of time to file a notice of appeal, (ECF 6, 7), and

¹ That order informed Plaintiff that he could commence a new action by paying the filing fee. (ECF 3 at 2 n.2.)

² The court received Plaintiff’s filings on October 9, 2024, but under the prison mailbox rule, the date on the documents, September 27, 2024, qualifies as the filing date. *See Walker v. Jastremski*, 430 F.3d 560, 562-64 (2d Cir. 2005) (discussing prison mailbox rule).

this court's Clerk's Office sent the appeal record to the Second Circuit Court of Appeals. On October 10, 2024, Plaintiff filed a motion for appointment of counsel. (ECF 8.)

DISCUSSION

A. Motion for extension of time to appeal

Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure requires a notice of appeal in a civil case to be filed within 30 days of entry of judgment. *See* Fed. R. App. P. 4(a)(1)(A). The Court entered judgment dismissing this action on September 16, 2024. Plaintiff filed the notice of appeal and the extension of time to file the notice of appeal on September 27, 2024, within 30 days of entry of judgment. Because Plaintiff timely filed the notice of appeal, the motion for an extension of time is denied as unnecessary.

B. Motion for appointment of counsel

On or about October 10, 2024, after Plaintiff's appeal was transmitted to the United States Court of Appeals for the Second Circuit, Plaintiff filed an application for the Court to request *pro bono* counsel. "The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Because the action in this Court is closed and on appeal to the Second Circuit, the Court lacks authority to consider Plaintiff's request for *pro bono* counsel. If Plaintiff seeks *pro bono* counsel to assist with his appeal, he should make such request to the Court of Appeals for the Second Circuit.

CONCLUSION

The motion for an extension of time is denied as unnecessary. The request for counsel is denied without prejudice to any application Plaintiff may make in the Second Circuit. The Clerk of Court is directed to terminate all pending motions. This matter is closed in this Court.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: December 5, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge